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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,335	11/06/2000	Mark Ryan	W2100/197718	9472
23370	7590	08/26/2004	EXAMINER	
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			LE, KHANH H	
			ART UNIT	PAPER NUMBER
			3622	
DATE MAILED: 08/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/707,335

Applicant(s)

RYAN ET AL.

Examiner

Khanh H. Le

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WV

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 5/17/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24, 38-64 is/are pending in the application.
- 4a) Of the above claim(s) 16-24 and 44-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 38-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### Non-Final Action

1. This Office Action is in response to the Response, dated 5/17/2004. Claims 1-4, 11, 14, 38-40, 44-47, 62 have been amended. Claims 25-37 are cancelled. Thus claims 1-24, 38-64 are pending. Claims 1, 11, 16, 38, 44, 48, 62 are independent.

2. To the previous restriction requirement, under 35 U.S.C. 121, Applicants chose :  
**Group II a). Claims 1-10, 11-15, 38-43**, drawn to “delivering of **other content** over the network based on local weather conditions”.

Applicants arguments regarding the restriction have been reviewed and found unpersuasive, thus the restriction and the rationale for it as earlier expressed stands. Claims in Group II a) are herein examined.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

*A person shall be entitled to a patent unless*

*(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.*

*The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an*

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*international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).*

- 4. Claims 1-8, 10, 11, 12, 15, 38-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Schwoegler, US 6,590,529 B2.**

As to claims 1, 2, 11, 12, 15 Schwoegler discloses

A method of selectively delivering data over a network to a consumer's device, comprising:

tagging data (advertisements of goods and services) to weather conditions so that a first set of data associated

with one weather condition differs from a second set of data associated with a second weather condition (see at least col. 13 lines 47-57: tagging of ads to specific weather conditions is implied to effect this disclosure );

receiving real-time weather data for a plurality of geographic locations (see at least abstract, Figs. 4, 5, 19 and associated text);

determining a geographic location associated with the consumer's device (see at least abstract, Figs. 5, 19 and associated text)

determining the real-time weather data that associated with the geographic location of the consumer's device (see at least abstract, Figs. 4, 5, 19 and associated text)

selecting and transmitting the advertising that corresponds to the weather conditions for the consumer's via the network (see at least col. 13 lines 47-57) .

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As to claim 3 and 4, discloses tagging recommendations or commands to the weather conditions and transmitting recommendations/commands corresponding to the current weather conditions of the consumer's device (see at least Figs. 19 and associated text: "alerts" is interpreted as recommendations for actions and also as commands such as in cases of government-ordered evacuations due to tornadoes, floods or the likes )

As to claims 5 and 6, Schwoegler discloses user location determined from information available at the consumer's device, or available through the network (see at least Figs.15-17 and associated text).

As to claims 7-8, 10 Schwoegler discloses the user's device comprises a computer, a hand-held device, (see at least Figs.15-17 and associated text), or a TV product (see at least col.1, lines16-17: "via television to mobile or fixed electronic devices").

As to claim 38 and 42 SCHWOEGLER discloses associating each of plural recommendations (alerts) with at least one trigger (precipitation or lightning) (see at least col. 7 lines 27-39), monitor the weather at the user location, (see claim 1 above), determining trigger able conditions and transmitting the alerts to the user (see at least col. 7 lines 27-39) over the Internet (see at least col.1 lines 10-17).

As to claim 39, SCHWOEGLER discloses severe weather monitoring (see at least col. 10 lines 40-53)

As to claim 40, SCHWOEGLER discloses recommendations (alerts) based on the location, and the consumer (see at least col. 7 lines 27-39: the location determines the weather, which determines the alerts, and only requesting users get the alerts, so it's based on the user; also see (see at least col. 10 lines 62+ )

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As to claim 41 (dependent on claim 38), SCHWOEGLER discloses identifying the consumer based on their interests (see at least col. 13 lines 42-45).

As to claim 43, SCHWOEGLER discloses enabling the consumer to define the triggerable conditions (see at least col. 7 lines 28-37).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.*

6. **Claims 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schwoegler.**

As to claim 9, Schwoegler does not specifically disclose:  
the consumer device being a mobile radiotelephone However , SCHWOEGLER discloses a user receiving weather-related data  
specific to their location on wireless mobile electronic devices such as cellular telephones, over the internet (see at least col.1 lines 10-17).

It is admitted, “ personal digital assistants (PDAs), lap-top computers, and mobile

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radiotelephones are all able to provide wireless access to the Internet. Additionally, Internet 20 access is also being made available through television, such as WebTV, enhanced TV, or digital TV.” (see Specifications , p. 4) Thus one skilled in the arts would have known to add to SCHWOEGLER’s invention the above admitted art-equivalent devices, that all allow connection via the Internet, to extend SCHWOEGLER’s Internet-applicable invention to those devices, as technology produces more of them.

**7. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwoegler in view of “AccuWeather.com,, Affiliate Opportunities, Advertising” webpage dated May 11, 2000 by the Wayback Machine, <http://www.archive.org/web/web.php>, herein “AccuWeather advertising”.**

As to claim 13, SCHWOEGLER does not specifically disclose selecting the ads based on the user geographic location though it discloses ads based on local weather determined in real-time (see at least col. 13 lines 47-57).

Further, “AccuWeather advertising” discloses targeted ads by weather type, by geographic location, or any combination thereof. It would have been obvious to one skilled in the art at the time the invention was made to add “AccuWeather advertising”’s teaching of ads based on both location and weather to allow very focused messages as taught by “AccuWeather advertising” (see paragraph 2).

As to claim 14, SCHWOEGLER discloses sending weather and location-based data (forecasts) based on as small a geographical area as possible (see at least col. 2 lines 15-26; 51-55) for increased precision and therefore value of the data. It would have been obvious to one skilled in the art at the time the invention was made to tag ads based on a smallest geographic region encompassing the user location to increase the precision and therefore the value of the data.

### Conclusion

8. Prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**The Weather Underground, Inc.**  
webpage, <http://www.wunderground.com/about/adinfo.asp>, dated May 08, 1999 by the Wayback Machine, <http://www.archive.org/web/web.php>, discloses advertising targeting by city, state, zip, country, weather conditions and time.

AccuWeather.com, dated 10/13/99 by the Wayback Machine, <http://www.archive.org/web/web.php>, discloses ads by location, specialty weather interest data (several categories).

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 703-305-0571. The Examiner works a part-time schedule and can best be reached on Tuesday-Wednesday 9:00-6:00.



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The examiner can also be reached at the e-mail address: [khanh.le2@uspto.gov](mailto:khanh.le2@uspto.gov). ( However, Applicants are cautioned that confidentiality of email communications cannot be assured.)

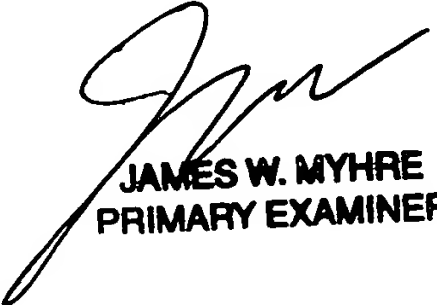
If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Eric Stamber can be reached on 703-305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

August 23, 2004

KHL

*KHL*

  
**JAMES W. MYHRE**  
**PRIMARY EXAMINER**